

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10449 / December 22, 2017**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 82395 / December 22, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18322**

<p><b>In the Matter of</b></p> <p style="text-align:center"><b>ALAN SHORTALL,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Alan Shortall (“Shortall” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter concerns several violations by Alan Shortall ("Shortall"), the former CEO of Unilife Corporation ("Unilife"). First, Shortall made a material misrepresentation in Unilife's public filings about the independence of the company's former lead "independent" director and Vice Chairman (the "Director"). Specifically, Shortall signed and certified Unilife's filings describing the Director as independent despite the fact that he knew or was reckless in not knowing that the Director was not independent. Second, Shortall arranged for Unilife to improperly advance funds on his own behalf and to loan money to the Director. Finally, Shortall failed to disclose publicly or make timely public disclosure of the fact that he encumbered millions of his shares of Unilife stock by pledging the shares as collateral for loans totaling over \$13.4 million, and that he transferred beneficial ownership of nearly 3 million Unilife shares for a period of time.

2. Without the knowledge of the other members of the Unilife Board of Directors (the "Board"), Shortall arranged for the company to transfer funds on behalf of the Director to prevent him from defaulting on a personal loan for which he pledged Unilife stock as collateral. Shortall also arranged for the Director to borrow funds from a large Unilife shareholder.

3. Likewise, without the knowledge of the other members of Unilife's Board, the Director (a) misleadingly stated to Shortall's mortgage broker that Unilife had agreed to pay a total of \$1.5 million toward Shortall's purchase of his residence; and (b) loaned Shortall \$170,000.

4. By signing and certifying Unilife's Form 10-K for the period ending June 30, 2014 (the "2014 Annual Report"), which stated that the Director was an independent director, Shortall knowingly made a misstatement of material fact. By this and other acts Shortall violated Sections 17(a)(1) and (3) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act.

5. Shortall's arrangement for Unilife to lend money to the Director, as described in Paragraph 2 and below, violated Section 13(k) of the Exchange Act. Shortall similarly arranged for Unilife to advance funds for certain of his own personal expenses, constituting loans in violation of the same provision.

6. Additionally, in violation of Exchange Act Sections 13(d)(2) and 16(a) and Rules 13d-2(a) and 16a-3 thereunder, Shortall failed to timely report that he pledged over 5.3 million Unilife shares as collateral for various stock loans—just less than half of his overall Unilife holdings and, as of November 2015, approximately 4% of the company's outstanding shares—

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

between October 2013 and August 2015. On September 30, 2015, he defaulted on certain of those loans, transferring beneficial ownership of nearly 3 million Unilife shares to the lender. Shortall did not disclose either the pledges of Unilife shares or the defaults until November 3, 2015.

### **Respondent**

7. **Shortall**, age 64, was the founder and, until March 2016, the CEO and Chairman of Unilife Corporation. On March 14, 2016, Unilife announced that Shortall stepped down as CEO and that he resigned as its Chairman.

### **Other Entity and Individual**

8. **Unilife** was a Delaware company, which formerly had medical device production facilities in York, Pennsylvania and corporate headquarters in King of Prussia, Pennsylvania. Unilife formerly designed and manufactured personal drug delivery systems, such as prefilled syringes and wearable injectors. Between February 2010 and May 2017, Unilife's shares of its common stock were listed on NASDAQ and its Australian CHESS Depository Interests ("CDIs") on the Australian Stock Exchange ("ASX") and it had securities registered under Section 12 and a reporting obligation under Section 13(a) of the Exchange Act. On April 12, 2017, Unilife and its U.S. subsidiaries filed voluntary petitions for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. On April 28, 2017, NASDAQ reported that, effective May 8, 2017, it would be de-listing Unilife's common stock. On July 17, 2017, Unilife held an auction for various assets and, by order dated July 21, 2017, the U.S. Bankruptcy Court for the District of Delaware approved the sale of substantially all of Unilife's assets.

9. **Director**, age 68, is a resident of Australia and was a member of Unilife's Board from 2003 through August 2015. He was Chairman of the Board between 2006 and 2013. In 2013, Shortall became Chairman and the Director became Vice Chairman and Lead Independent Director. At various times, the Director sat on the Board's Compensation Committee (as Chair), the Nominating and Corporate Governance Committee (briefly as Chair), and the Audit Committee. Unilife reported the Director was "independent" in filings between 2010 and 2014, before he retired.

### **Background**

#### **SHORTALL MADE A FALSE STATEMENT OF MATERIAL FACT REGARDING UNILIFE DIRECTOR'S INDEPENDENCE**

#### ***Shortall Arranged for Unilife to Make the Director's Loan Interest Payments***

10. In or around June 2014, Shortall became aware that the Director was going to default on interest payments on two outstanding loans. The Director had pledged certain Unilife shares as collateral for those loans. Default would mean that the Director would lose those shares and would have to publicly report the stock transfers. The unpaid interest was \$12,468.27.

11. Rather than allowing the Director to default, Shortall agreed to arrange for Unilife to cover the payments.

12. Shortall understood that Unilife was prohibited from loaning money to a Board member. To pay the Director's debts, therefore, Shortall told Unilife's Chief Accounting Officer that the Company would be lending the funds to an external consultant as a "loan." The wire instructions, however, directed the funds to go into the account of the Director's lender, in payment of the Director's debt.

13. There was no written loan agreement between Unilife and the external consultant. The purported loans were never repaid, nor was any interest ever paid thereon.

14. Based on his instructions, between July 2014 and July 2015, Shortall caused Unilife to make five payments of approximately \$12,468.27 each to pay the Director's interest on his loans. Director never repaid Unilife.

15. The Board was never informed about these payments.

***The Director Made Misleading Statements to Help Shortall Obtain a Mortgage***

16. In early 2015, Shortall was seeking to relocate to Villanova, Pennsylvania from his then current home in Dillsburg, Pennsylvania. He found a home with a purchase price of approximately \$4.95 million. Shortall was seeking at least \$3.3 million in financing to purchase the house.

17. During discussions with a potential lender, Shortall was told that he could seek a maximum of \$2.75 million, based on his income and other factors, in order for his application to be viable.

18. Among other steps, Shortall drafted a letter for signature by the Director to send to the potential mortgage lender. The letter stated: "This is to confirm that the Board and the Compensation Committee of Unilife have approved the payment of all of Alan Shortall, Chairman & CEO's relocation costs and expenses in relocating he and his family close to our King of Prussia headquarters. Such payments by the company will include the required amount for Mr. Shortall to complete the purchase of [the Villanova property]. The company having already paid the deposit amount of \$200,000 is expecting that the final amount it will pay directly from the Unilife bank account is approximately \$1.3M." It was signed "Vice Chairman & Chairman of the Compensation Committee."

19. The Director approved the letter and Shortall sent it to the lender on July 10, 2015 (only two days after Shortall arranged for Unilife to make an interest payment on Director's behalf, as discussed above). Shortall knew that the lender was relying on these statements.

20. Contrary to the statements in the letter, neither the Board in full nor the Compensation Committee had approved the initial down payment of \$200,000, nor the amounts required at closing on Shortall's Villanova property.

21. Nor did the company actually pay such amounts with company funds. Rather, Shortall deposited his own personal funds into Unilife's corporate bank account; and then he subsequently arranged to have those funds wired from the corporate account to the property sellers. The source of the funds was a stock loan that Shortall took out by pledging his Unilife shares (discussed *infra* at ¶ 41).

22. Shortall never told the lender that his own personal funds were being used for the purchase of the property, wired in and out of Unilife's accounts.

***Shortall Borrowed Money from the Director***

23. Between June and August 2011, Shortall borrowed \$170,000 from the Director.

24. The loans bore no interest rate. There was no collateral underlying them. There was no writing memorializing the terms.

25. Shortall does not believe that he ever repaid the loans.

26. Shortall did not tell anyone at Unilife about the loans.

***Shortall Helped the Director Obtain Loans***

27. In April 2010, the Director was in need of between \$2 and \$3 million in connection with his overseas businesses. Shortall sought out potential lenders for the Director, executed agreements where he agreed to personally guarantee the loans (though such agreements were never counter-executed), and ultimately found a large Unilife shareholder (the "Large Shareholder") to pledge 3.3 million Unilife Australian shares in support of the loan that the Director finally obtained.

28. Separately, in February 2010, Shortall arranged for the Large Shareholder to loan the Director \$250,000 to exercise Unilife stock options.

***Shortall Signed and Certified Unilife's 2014 Annual Report Describing the Director as Independent***

29. The 2014 Annual Report specified that the Director was the Vice Chairman of Unilife's Board and the company's Lead Independent Director. Shortall signed and certified the 2014 Annual Report, even though he knew, or was reckless in not knowing, that it contained a false statement about the Director's independence.

30. NASDAQ Rule 5605(a)(2) defines an Independent Director as "a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director."

31. ASX Corporate Governance Council Corporate Governance Principles and Recommendations defines an independent director as "a director who is free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence,

in a material respect his or her capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity and its security holders generally.”

32. The 2014 Annual Report, filed on September 15, 2014, falsely stated that the Director was an “independent director,” as defined in the NASDAQ listing rules and the ASX listing rules, despite the fact that Shortall and the Director assisted each other with financial transactions.

33. Shortall signed the 2014 Annual Report and certified that, to his knowledge, the report did “not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.”

34. The false statement made in the 2014 Annual Report was incorporated by reference into Unilife’s January 30, 2015 and July 29, 2015 Prospectus Supplements to a registration statement filed on Form S-3.

#### SHORTALL ARRANGED FOR COMPANY LOANS TO THE DIRECTOR AND ADVANCES TO HIMSELF

35. Shortall’s knowing arrangement for Unilife to lend money to pay off the Director’s loan obligations, as described in Paragraphs 10-15 above, constituted a personal loan that was prohibited by Section 13(k) of the Exchange Act.

36. Separately, Shortall knowingly arranged for Unilife to make personal payments on his behalf, in aggregate of approximately \$340,000 over four years, before Unilife received reimbursement payments from Shortall for periods of between 5 and thirty-six days. This conduct similarly violated Section 13(k) of the Exchange Act.

#### SHORTALL FAILED TO PROPERLY REPORT ENCUMBRANCES ON HIS UNILIFE HOLDINGS

37. Exchange Act Section 13(d) requires reporting on a Schedule 13D by any person who acquires beneficial ownership of more than 5% of any class of securities registered pursuant to Section 12. Among the information required to be filed on the Schedule are the names of the beneficial owners, the amounts owned, the source of funds, any plans or proposals regarding the issuer. Further disclosure is required of any contracts “concerning the transfer or voting of any of the securities,” or contracts where the “securities are pledged or otherwise subject to a contingency the occurrence of which would give another person voting or investment power over the securities.” Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require that if any material change occurs in the facts set forth in the statement filed with the Commission, an amendment must be filed “promptly.” Any delay in filing beyond the date the filing reasonably can be made may not be considered prompt.<sup>2</sup>

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<sup>2</sup> Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n.14.



38. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors and beneficial owners of more than 10% of any class of any equity security registered pursuant to Section 12 to file Forms 3, 4 and 5. Under Rule 16a-3, to keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days of the execution date.

39. In July 2006, Shortall entered into an agreement with the Large Shareholder. The agreement provided an open line of credit from the Large Shareholder to Shortall. As collateral for the agreement, Shortall pledged all 6.5 million of his Australian Unilife shares. Pursuant to this line of credit, the Large Shareholder loaned Shortall approximately \$5,840,000 (or AU\$8 million) between 2006 and 2012. Shortall never reported the pledge of shares when he filed his first Schedule 13D in August 2010 (his "Initial Schedule 13D").<sup>3</sup>

40. In March 2010, Shortall entered into a second agreement with the Large Shareholder, which provided that the Large Shareholder would advance \$400,000 (approximately AU\$500,000) for the purpose of acquiring Unilife stock, which would be used as collateral for the loan. Upon the sale of such shares, the Large Shareholder would be entitled to the repayment of his principal plus 75% of any proceeds above the principal amount. Here too, Shortall never reported the pledge of shares in his Initial Schedule 13D.

41. Separately, on November 3, 2015 Shortall filed a Schedule 13D/A reporting facts regarding five separate loans that he had entered into with two separate stock loan companies. Shortall pledged his Unilife shares as collateral for all five loans. Specifically, Shortall reported for the first time in his November 2015 Schedule 13D/A:

- a. Shortall had pledged an aggregate of 5,301,668 shares of Unilife stock as collateral for five different loans, executed on dates ranging from October 21, 2013 through June 16, 2015;
- b. Pursuant to the terms of the loans: Shortall agreed to transfer to the lenders all right, title, ownership and interest in the pledged Unilife shares during the term of each the loans; the shares were registered in the names of the lender during the terms of the loans; upon repayment of the loans and interest, the lender had to return shares of the same class and issue as those pledged; and upon default, the lender may take, sell or otherwise dispose of the pledged shares as its own property;
- c. On September 30, 2015, Shortall defaulted on two of the stock loans, which were collateralized by 2,951,668 Unilife shares;

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<sup>3</sup> A Unilife Australian CDI was a common stock that represented one-sixth of a share of U.S. common stock, after Unilife redomiciled and listed in the United States on the NASDAQ. CDI holders had the right to vote their shares at Unilife's general meetings, if they followed certain prescribed procedures.

- d. On October 26, 2015, Shortall entered into a supplemental agreement with one of the lenders whereby, among other things, Shortall pledged additional shares of Unilife as collateral for the two defaulted-upon loans; and
- e. As a result of the default, according to Shortall, for the period between September 30, 2015 and October 26, 2015, the lender “may be deemed the beneficial owner of” the 2,951,668 Unilife shares.

42. On the same day that Shortall filed his Schedule 13D/A, he filed a Form 4 reporting (1) that on September 30, 2015, he disposed of 2,951,668 shares of Unilife stock, and (2) on October 26, 2015, he reacquired the same amount.

43. Shortall’s pledges and his disposition of Unilife shares by default should have been disclosed. First, the pledges to Large Shareholder should have been disclosed in Shortall’s initial Schedule 13D filing. Second, each stock loan pledge described in Paragraph 41(a), and the material disposition of beneficial ownership caused by the default described in Paragraph 41(c), should have been disclosed by Shortall promptly in amendments to his Schedule 13D.

44. Shortall’s Form 4, which was due 2 business days after he disposed of his shares by default on September 30, 2015, was untimely filed 22 business days after the default. Similarly, his re-acquisition of the shares should have been reported 2 business days later on October 28, 2015.<sup>4</sup>

### **Violations**

45. As a result of the conduct described above, Shortall violated:
- a. Sections 17(a)(1) and (3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities;
  - b. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder; and
  - c. Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

46. Also as a result of the conduct above, Shortall caused Unilife’s violations of Section 13(k) of the Exchange Act, which prohibits an issuer from, directly or indirectly, extending or maintaining credit in the form of a personal loan to any executive officer or director of that issuer.

### **Shortall’s Inability to Pay**

47. Respondent has submitted a sworn Statement of Financial Condition dated July 5, 2017 and other evidence and has asserted his inability to pay a civil penalty. The Commission considered Respondent’s sworn Statement of Financial Condition in setting the amount of civil penalties.

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<sup>4</sup> Pledges and loans of securities are not reportable events under Exchange Act Section 16.



#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Shortall's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Shortall shall cease-and-desist from committing or causing any violations and any future violations of Sections 17(a)(1) and (3) of the Securities Act and Sections 10(b), 13(d)(2), 13(k) and 16(a) of the Exchange Act and Rules 10b-5, 13d-2(a) and 16a-3 thereunder;

B. Respondent Shortall be, and hereby is, prohibited for five years from the date of this Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

C. Shortall shall within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payments must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Shortall as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lara Shalov Mehraban, Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

## V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary